

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LAQUITA SMITH,

Plaintiff,

vs.

WAL-MART STORES EAST, LP,

Defendant.

Case No. 21-cv-11313-JEL-KGA

Hon. Judith E. Levy  
Magistrate Judge Kimberly G. Altman

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**DEFENDANT WAL-MART STORES EAST, LP'S MOTION FOR ORDER  
TO SHOW CAUSE AGAINST BUTLER CHIROPRACTIC & WELLNESS,  
ALL PATIENTS CARE, MEDICAL GROUP OF CENTRAL GEORGIA,  
HOUSTON MEDICAL CENTER, AND ORTHOGEORGIA  
AND TO COMPEL PRODUCTION OF RECORDS**

NOW COMES Defendant, WAL-MART STORES EAST, LP.  
("Defendant"), by and through its attorneys ZAUSMER, P.C., and hereby moves  
this Court for an Order to Show Cause Butler Chiropractic & Wellness, All  
Patients Care, Medical Group of Central Georgia, Houston Medical Center, and  
OrthoGeorgia, and states as follows:

1. Plaintiff, Lequita Smith, filed this premises liability action against Defendant as a result of an incident that allegedly occurred on Defendant's premises on August 1, 2020.

2. Plaintiff filed her Complaint, stating that she suffered a tear of her patella tendon and a back injury, which allegedly required medical treatment. (Exhibit A).

3. Following the incident, Plaintiff treated at Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia. As such, Defendant sought to secure those medical treatment records, as they are clearly relevant to the claims at issue, and discoverable in this case.

4. Through Defendant's records processing service, LCS Record Retrieval, Defendant issued subpoenas with accompanying authorizations to the following entities on the following dates:

- a. Butler Chiropractic & Wellness on October 26, 2021;
- b. All Patients Care on September 13, 2021;
- c. Medical Group of Central Georgia on September 13, 2021;
- d. Houston Medical Center on October 26, 2021; and
- e. OrthoGeorgia on October 26, 2021.

(Exhibit B – Subpoenas, Authorizations, and Proofs of Service)

5. The subpoenas served on Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia fully complied with Fed. R. Civ. P. 45(a).

6. The subpoena issued to Butler Chiropractic & Wellness required the deponent to produce Plaintiff's records on or before November 11, 2021. To date, Defendant has not received any records from this deponent. LCS Record Retrieval has followed up with Butler Chiropractic & Wellness regarding their failure to comply with the subpoena. (Exhibit C – LCS Communication Log Notes).

7. The subpoena issued to All Patients Care required the deponent to produce records, including diagnostic films, on or before September 27, 2021. To date, Defendant has not received diagnostic films from this deponent. LCS Record Retrieval has followed up with All Patients Care regarding their failure to fully comply with the subpoena. (Exhibit C – LCS Communication Log Notes).

8. The subpoena issued to Medical Group of Central Georgia required the deponent to produce Plaintiff's records, including diagnostic films and billing records, on or before September 27, 2021. To date, Defendant has not received diagnostic films or billing records from this deponent. LCS Record Retrieval has

followed up with Medical Group of Central Georgia regarding their failure to fully comply with the subpoena. (Exhibit C – LCS Communication Log Notes).

9. The subpoena issued to Houston Medical Center required the deponent to produce Plaintiff's records on or before November 11, 2021. To date, Defendant has not received any records from this deponent. LCS Record Retrieval has followed up with Houston Medical Center regarding their failure to comply with the subpoena. (Exhibit C – LCS Communication Log Notes).

10. The subpoena issued to OrthoGeorgia required the deponent to produce Plaintiff's records, including diagnostic films, on or before November 11, 2021. To date, Defendant has not received diagnostic films from this deponent. LCS Record Retrieval has followed up with OrthoGeorgia regarding their failure to fully comply with the subpoena. (Exhibit C – LCS Communication Log Notes).

WHEREFORE, Defendant respectfully request that this Court enter an Order directing Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia to appear for a hearing, on a date and time to be set by this Court to show cause as to why they should not be held in contempt of court for failure to comply with the duly executed subpoenas for their records, and an Order for the production of records.

Defendant further requests an award of reasonable costs and attorney fees for the deponents' failure to comply with the subpoena, thereby necessitating this motion.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Brian D. King

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Dated: December 10, 2021

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LAQUITA SMITH,

Plaintiff,

vs.

WAL-MART STORES EAST, LP,

Defendant.

Case No. 21-cv-11313-JEL-KGA

Hon. Judith E. Levy  
Magistrate Judge Kimberly G. Altman

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**BRIEF IN SUPPORT OF DEFENDANT WAL-MART STORES EAST, LP'S**  
**MOTION FOR ORDER TO SHOW CAUSE AGAINST**  
**BUTLER CHIROPRACTIC & WELLNESS, ALL PATIENTS**  
**CARE, MEDICAL GROUP OF CENTRAL GEORGIA,**  
**HOUSTON MEDICAL CENTER, AND ORTHOGEORGIA,**  
**AND TO COMPEL PRODUCTION OF RECORDS**

**CONCISE STATEMENT OF THE ISSUES PRESENTED**

- I. Whether the Court should issue an Order directing Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia to appear for a hearing, on a date and time to be set by this Court, to show cause as to why they should not be held in contempt of court for failure to comply with the duly executed subpoenas for Plaintiff's records.
  
- II. Whether this Court should enter an Order requiring Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia, to comply with a valid subpoena, and to produce the requested records to Defendant, along with Defendant's reasonable cost and attorney fees for their failure to comply with the subpoenas, thereby necessitating this motion.

**CONTROLLING AUTHORITY FOR THE RELIEF SOUGHT**

The controlling authority for the relief sought can be found in Fed. R. Civ. P. 45(e)(1) and Fed. R. Civ. P. 45(g), as well as this Honorable Court's discretion.



**INDEX OF EXHIBITS**

- A Complaint
- B Subpoenas Directed to Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia, Authorizations, and Proofs of Service
- C LCS Communication Log Notes

### **STATEMENT OF MATERIAL FACTS**

Plaintiff, Lequita Smith, filed this premises liability action against Defendant as a result of an incident that allegedly occurred on Defendant's premises on August 1, 2020. Through Defendant Wal-Mart's records processing service, Legal Copy Services, Defendant issued subpoenas to the following entities:

- Butler Chiropractic & Wellness on October 26, 2021;
- All Patients Care on September 13, 2021;
- Medical Group of Central Georgia on September 13, 2021;
- Houston Medical Center on October 26, 2021; and
- OrthoGeorgia on October 26, 2021.

(Exhibit B – Subpoenas, Authorizations, and Proofs of Service);

Defendant Wal-Mart, through LCS Record Retrieval, has followed up with these entities on several occasions inquiring about the status of the records. (Exhibit C – LCS Communication Log Notes). However, to date, these facilities have not provided complete copies of the records or a response to Defendant's request. These requests are all overdue. Thus, Defendant has no choice but to file this Motion.

## **ARGUMENT**

The subpoenas served upon Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia were valid and requested documents which Plaintiff has already authorized to be released to Defendant. The subpoenas served upon Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia are valid and requested information relevant to Plaintiff's claims and discoverable under Fed. R. Civ. P. 26(b). Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia have failed to comply with the subpoenas, and Defendant is unable to adequately and properly prepare a defense to Plaintiff's claims and, as a result, is greatly prejudiced.

The failure of Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia to produce the documents demanded in the Subpoena is a violation of Fed. R. Civ. P. 45(e)(1)(A), which states:

“A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.”

Additionally, Fed. R. Civ. P. 45(g) states:

“The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.”

Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia have not made a claim of privilege or provided any other excuse for failing to provide the requested documents. Fed. R. Civ. P. 45(e)(2)(A).

There is simply no excuse for Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia’s failure to produce the documents requested by Defendant’s subpoenas. Fed. R. Civ. P. 45(g) permits this Court to enter an Order holding Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia in contempt for failure to comply with a valid subpoena. No motion to quash was filed, and it is abundantly clear that the requested records are discoverable and relevant.

WHEREFORE, Defendant respectfully requests that this Court enter an Order directing Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia to appear for a hearing, on a date and time to be set by this Court to show cause as to why they

should not be held in contempt of court for failure to comply with the duly executed subpoena for their records, and an Order for the production of records. Defendant further requests an award of reasonable costs and attorney fees for Butler Chiropractic & Wellness, All Patients Care, Medical Group of Central Georgia, Houston Medical Center, and OrthoGeorgia's failure to comply with the subpoena, thereby necessitating this motion.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Brian D. King

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BRIAN D. KING (P78738)

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Dated: December 10, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2021, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing using the Court's e-filing system.

/s/Beth Sharp

BETH SHARP